

BANK INDONESIA REGULATION
NUMBER: 7/46/PBI/2005
CONCERNING
FUNDS MOBILIZATION AND FINANCING AGREEMENTS FOR BANKS
CONDUCTING BUSINESS BASED ON SHARIA PRINCIPLES
THE GOVERNOR OF BANK INDONESIA,

- Considering:
- a. whereas sharia banking must maintain the confidence of the public at all times, both in regard to financial aspects and compliance with the sharia principles that constitute the basis of its operations;
 - b. whereas each player in the sharia banking industry, including bank managers/holders of funds/users of funds, and the supervisory authority must have a common understanding of Agreements for funds mobilization and channeling products operated by sharia banks;
 - c. now therefore based on the considerations referred to in letter a and letter b, it is deemed necessary to enact provisions concerning funds mobilization and financing Agreements for banks conducting business based on sharia principles in a Bank Indonesia Regulation;

- In view of :
- 1. Act Number 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia Number 31 of 1992, Supplement to the State Gazette of the Republic of Indonesia Number 3472), as amended by Act Number 10 of 1998 (State Gazette of the

Republic of Indonesia Number 182 of 1998, Supplement to the State Gazette of the Republic of Indonesia Number 3790);

2. Act Number 23 of 1999 concerning Bank Indonesia (State Gazette of the Republic of Indonesia Number 66 of 1999, Supplement to the State Gazette of the Republic of Indonesia Number 3843) as amended by Act Number 3 of 2004 (State Gazette of the Republic of Indonesia Number 7 of 2004, Supplement to the State Gazette of the Republic of Indonesia Number 4357);

HAS DECREED:

To enact: THE BANK INDONESIA REGULATION CONCERNING
FUNDS MOBILIZATION AND FINANCING AGREEMENTS
FOR BANKS CONDUCTING BUSINESS BASED ON SHARIA
PRINCIPLES

CHAPTER I

GENERAL PROVISIONS

Article 1

The terminology used in this Bank Indonesia Regulation has the following meanings:

1. “Bank” is a Commercial Bank or Rural Bank as defined in Act Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998, conducting business based on Sharia principles;

2. “Sharia ...

2. “Sharia Principles” are sharia principles as defined in Article 1 number 13 of Act Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998;
3. “Agreement” (*akad*) is a written contract setting forth an *ijab* (offer) and *qabul* (acceptance) between the Bank and another party that sets forth rights and obligations for each party in accordance with Sharia principles;
4. “*Wadiah*” is an agreement for placement of funds or goods made between a holder of funds or owner of goods and a custodian of the funds or goods with the obligation for the party accepting the placement to return the entrusted funds or goods at any time.
5. “*Mudharabah*” is funds placement from a holder of funds (*shahibul maal*) with a manager (*mudharib*) to conduct a specified business with sharing applying the method of profit and loss sharing or revenue sharing between the two parties at a ratio agreed in advance.
6. “*Musyarakah*” is the placement of funds by holders of funds/capital for combining their funds/capital in a specified business with profit share at a ratio agreed in advance, while any losses are also borne by all holders of funds/capital according to their respective portion of funds/capital.
7. “*Murabahah*” is a sale and purchase of goods at cost price plus an agreed profit margin.
8. “*Salam*” is the sale and purchase of goods by means of order placed with certain requirements and full cash payment in advance.
9. “*Istishna*” is the sale and purchase of goods comprising an order for production of goods according to certain agreed criteria and requirements, with payment on agreed terms.

10. “*Ijarah*” is a transaction for leasing of goods and/or hire of labor over a specified period through lease payments or remuneration for services rendered;
11. “*Qardh*” is the lending and borrowing of funds without remuneration in which the borrowing party is required to repay the loan principal in a lump sum or installments over a specified period.

Article 2

- (1) In conducting the activities of funding and financing of funds, Banks are required to prepare Agreements (*Akad*) in accordance with the provisions of this Bank Indonesia Regulation.
- (2) Agreements as referred to in paragraph (1) are required to confirm the type of sharia transaction used.
- (3) Sharia transactions as referred to in paragraph (2) may not contain elements of *gharar* (short selling), *maysir* (gambling/games of chance), *riba* (interest/usury), *zalim* (fraud), *risywah* (bribery), or prohibited goods.

CHAPTER II

REQUIREMENTS FOR AGREEMENTS FOR FUNDS MOBILIZATION AND FINANCING

Part One

Mobilization of Funds

Article 3

The applicable minimum requirements for mobilization of funds in the form of *Wadi'ah*-based demand deposits or savings deposits are as follows:

a. the ...

- a. the Bank shall act as the party receiving funds for safekeeping and the customer shall act as owner of the funds for safekeeping;
- b. the funds for safekeeping shall be deposited fully with the Bank and stated at nominal value;
- c. the funds for safekeeping may be withdrawn upon demand;
- d. no undertaking may be made that promises payment of remuneration or bonus to the customer;
- e. the Bank shall guarantee the return of the funds for safekeeping to the customer.

Article 4

The applicable minimum requirements for mobilization of funds in demand deposits based on *Mudharabah* are as follows:

- a. the customer shall act as holder of funds (*shahibul maal*) and the Bank shall act as manager of the funds (*mudharib*);
- b. the Bank may conduct various forms of business not in conflict with Sharia Principles and develop these businesses, including entering into *Mudharabah* Agreements with other parties;
- c. capital must be in cash and not receivables, and must be stated at nominal value;
- d. the customer shall maintain the minimum demand deposit balance stipulated by the Bank that may not be withdrawn by the customer, except for closing of account;
- e. the profit share must be stated as a ratio and set out in the account opening Agreement;

f. payment ...

- f. payment of profit share for the customer shall be based on the lowest balance at the end of each reporting month;
- g. the Bank shall cover the demand deposit operating costs by applying the profit share to which it is entitled; and
- h. the Bank is not permitted to reduce the customer profit ratio without approval from the party concerned.

Article 5

The applicable minimum requirements for mobilization of funds in the form of *Mudharabah*-based savings deposits or time deposits are as follows:

- a. The Bank shall act as manager of funds and the customer shall act as holder of funds;
- b. the funds shall be paid in full to the Bank and stated at nominal value;
- c. the profit share from management of investment funds shall be stated as a ratio.
- d. in a *Mudharabah*-based savings deposit Agreement, the customer shall invest a specified minimum of funds in an amount stipulated by the Bank that may not be withdrawn by the customer except for closing of account;
- e. the customer may not withdraw funds outside the agreed terms;
- f. the Bank in the capacity of *mudharib* shall cover the costs of operating the savings deposit or time deposit by applying the profit ratio to which it is entitled;
- g. the Bank is not permitted to reduce the customer profit share without approval from the customer; and
- h. the Bank shall not guarantee the customer funds, unless prescribed otherwise in the applicable laws and regulations.

Part Two

Financing of Funds

Sub-section 1

Financing of Funds Based on *Mudharabah* and *Musyarakah*

Article 6

The applicable minimum requirements for financing of funds in the form of *Mudharabah*-based financing are as follows:

- a. the Bank shall act as *shahibul maal*, providing the funds in full, and the customer shall act as *mudharib*, managing the funds in a business;
- b. the financing term, repayment of funds, and profit share shall be determined according to terms agreed by the Bank and the customer;
- c. the Bank shall not participate in the management of the customer business, but shall retain rights in the supervision and development of the customer business;
- d. financing shall be provided in cash and/or kind;
- e. if the financing is provided in cash, the amount must be specified;
- f. if the financing is provided in kind, the transferred goods must be appraised at cost or fair market value;
- g. profit share from management of the funds shall be specified as an agreed ratio;
- h. the Bank shall bear all risks of loss from the financed business, unless the customer commits fraud, negligence, or breach of agreement that results in loss for the business;
- i. the agreed profit sharing ratio may not be changed throughout the duration of the investment, unless based on terms agreed by the parties, and shall not apply retroactively;

j. the ...

- j. the profit sharing ratio may be tiered with different levels of ratio based on agreed terms in the opening of the Agreement;
- k. profit share shall be distributed by means of the profit and loss sharing method or revenue sharing method;
- l. profit share shall be based on the business performance of the *mudharib* according to the business performance report for the business of the *mudharib*;
- m. if a customer holds equity participation in a business financed by the Bank, the following provisions shall apply:
 - (i) the customer shall act as business partner and *mudharib*;
 - (ii) in respect of profit generated by the financed business, the customer shall collect a profit share according to share of capital, with residual profit divided according to terms agreed by the Bank and the customer;
- n. repayment of the financing shall be executed at the end of the Agreement for financing of up to one year or in installments based on the cash inflow of the customer's business; and
- o. the Bank may request a guarantee or collateral in anticipation of risk if the customer is unable to meet the obligations set forth in the Agreement due to negligence and/or fraud.

Article 7

The applicable minimum requirements for financing of funds in the form of financing based on *Mudharabah muqayyadah* (restricted investment) are as follows:

a. the ...

- a. the Bank shall act as channeling agent for the customer, who shall act as manager of funds for business with the terms and conditions and nature of the business to be determined by the investor(s);
- b. the term of the financing, repayment, and profit share shall be determined on the basis of terms agreed among the investor(s), customer, and the Bank;
- c. the Bank shall not participate in the management of the customer business, but shall retain rights in the supervision and development of the customer business;
- d. financing shall be provided in cash and/or kind;
- e. in the event that financing is provided in kind, the transferred goods must be appraised at cost or market value;
- f. the Bank, acting in the capacity of funds channeling agent, may receive a fee, the amount of which is left to the terms agreed by the parties;
- g. profit share from management of invested funds shall be stated as a ratio agreed by the investor(s) and the customer;
- h. the Bank, acting as channeling agent for funds belonging to the investor(s), shall not bear risk of loss from the financed business; and
- i. the investor(s), acting as holder of *Mudharabah muqayyadah* funds, shall bear all risks of financial loss from the business, unless the customer commits fraud, negligence, or breach of the agreement resulting in loss for the business.

Article 8

The applicable minimum requirements for financing of funds in the form of *Musyarakah*-based financing are as follows:

a. the ...

- a. The Bank and the customer shall each act as partners by jointly providing funds and/or goods to finance a specified business venture;
- b. the customer, acting as business manager, and the Bank, acting as business partner, may participate in management of the business according to agreed powers and assignment of tasks;
- c. the Bank may appoint the customer to manage the business, based on the terms agreed with the customer;
- d. financing shall be provided in cash and/or in kind;
- e. if the financing is provided in kind, the goods handed over must be appraised at cash value based on agreed terms;
- f. the financing term, repayment of funds, and profit share shall be determined on the basis on the terms agreed between the Bank and the customer;
- g. operating costs shall be charged to joint capital according to agreed terms;
- h. profit share and management of funds shall be stated as an agreed ratio;
- i. the Bank and the customer shall bear losses on a proportional basis according to their respective share of capital, except in the event of fraud, negligence, or breach of the agreement by one of the parties;
- j. the agreed profit sharing ratio may not be changed for the duration of the investment, except on the basis of terms agreed by the parties, and such change shall not apply retroactively;
- k. the profit sharing ratio may be tiered with different levels of ratio, based on agreed terms in the opening of the Agreement;
- l. profit sharing may apply the profit and loss sharing method or the revenue sharing method;
- m. division of profit shall be based on business results in accordance with the customer financial statement;

n. repayment ...

- n. repayment of financing principal shall be executed at the end of the Agreement or in installments based on the cash inflow of the business; and
- o. the Bank may request guarantee or collateral to anticipate risk of default by the customer on obligations stated in the Agreement by reason of negligence and/or fraud.

Sub-section 2

Financing of Funds based on *Murabahah*, *Salam*, and *Istishna'*

Article 9

- (1) The applicable minimum requirements for financing of funds in the form of *Musyarakah*-based financing are as follows:
 - a. the Bank shall provide funds for financing on the basis of an agreement for sale and purchase of goods.
 - b. the term for payment of prices for goods by the customer to the Bank shall be based on the terms agreed by the Bank and the customer;
 - c. the Bank may finance part or all of the purchase price for the goods at agreed quality specifications;
 - d. if the Bank delegates the purchase of the goods to the customer (*wakalah*), the *Murabahah* Agreement must be executed after the goods in principle have become the property of the Bank;
 - e. the Bank may request the customer to make a down payment or *urbun* upon signature of the initial agreement for the customer order for the goods;
 - f. the Bank may request the customer to provide additional collateral other than the goods financed by the Bank;

g. agreed ...

- g. agreed terms on margin must be determined once at the beginning of the Agreement and may not change throughout the duration of the Agreement;
 - h. the financing installments must be executed on a pro rata basis throughout the duration of the Agreement.
- (2) If the Bank requests the customer to make a down payment or *urbun* as referred to in paragraph (1) letter e, the following provisions shall apply:
- a. in the case of down payment, if a customer refused to purchase the goods after making the down payment, the real costs of the Bank must be paid from the down payment and the Bank must return the surplus down payment to the customer. However, if the down payment is insufficient to cover the loss borne by the Bank, the Bank may demand further payment from the customer to cover the remaining loss;
 - b. in the case of *urbun*, if the customer cancels the purchase of goods, the *urbun* previously paid by the customer shall be forfeited to the Bank to a maximum of the loss borne by the Bank as a result of the cancellation, and if the *urbun* is insufficient, the customer shall be required to pay the shortfall.

Article 10

- (1) In *Murabahah* financing, the Bank may discount the total payment obligation only for customers who have paid installments promptly and/or customers who have suffered a loss of repayment capacity.
- (2) The amount of the *Murabahah* discount for the customer may not be promised in the Agreement and shall be at the discretion of the Bank policy.

Article 11

- (1) The following minimum requirements shall apply to financing of funds in the form of financing based on *Salam*:
- a. the Bank shall purchase the goods from the customer at agreed specifications, quality, quantity, term, place, and price;
 - b. payment of the price by the Bank to the customer must be made in full upon entering into the Agreement;
 - c. payment by the Bank to the customer may not constitute release of customer obligations to the Bank;
 - d. the amount and form of the payment instrument must be known in keeping with agreed terms;
 - e. the Bank, acting in the capacity of buyer, may not engage in short-selling of goods;
 - f. to obtain assurance that the seller has delivered the goods according to the agreed terms, the Bank may request a third party guarantee in accordance with the applicable legal provisions; and
 - g. the Bank may only obtain profit or bear loss at the time that the goods purchased by the Bank are sold to another party, unless there is a change from market price to cost price before the goods are sold to another party.
- (2) If all or part of the goods are not available in accordance with the agreed delivery schedule, quality, or quantity, the Bank shall have the choice to:
- a. cancel (*fasakh*) the Agreement and request refund of monies legitimately belonging to the Bank;
 - b. wait for delivery of available goods; or

c. request ...

- c. request the customer to replace with other, similar goods, or non-similar goods insofar as their market value is equal to the goods in the original order;
- (3) If the customer delivers goods of higher quality to the Bank, the customer may not demand a higher price, unless so agreed between the Bank and the customer;
- (4) If the customer delivers inferior quality goods to the Bank and the Bank willingly accepts these goods, the Bank may not demand a discount.

Article 12

- (1) The applicable requirements for financing of funds in the form of financing based on parallel *Salam* shall be at least as follows:
 - a. the Bank as buyer in a *Salam* Agreement may enter into a parallel *Salam* Agreement with another party in which the Bank acts as seller;
 - b. the rights and obligations in both *Salam* Agreements must be separate;
 - c. the fulfilment of obligations in one of the *Salam* Agreements may not be contingent upon the other *Salam* Agreement;
 - d. the Bank acting as seller in a parallel *Salam* Agreement must settle obligations to other parties if the customer in the *Salam* Agreement fails to fulfill the terms of the *Salam* Agreement.
 - e. the Bank shall sell goods to the ordering customer at the agreed specifications, quality, quantity, schedule, place, and price;
 - f. the price shall be paid in full by the customer to the Bank at the time of entering into the Agreement;
 - g. if the price is paid by the customer to the Bank in installments, these payments shall be executed under a *Murabahah* Agreement;

h. payment ...

- h. payment by the customer to the Bank may not constitute release of the Bank from obligations due to the customer;
 - i. the amount and form of the payment instrument must be known, in accordance with agreed terms;
 - j. the customer as buyer may not engage in short-selling of goods;
 - k. in order to provide assurance for the Bank in delivering goods according under agreed terms, the customer may request a third party guarantee in accordance with the applicable regulatory provisions;
- (2) If all or part of the goods are not available at the agreed time of delivery or in the agreed quantity or amount, the customer may choose to:
- a. cancel (*fasakh*) the Agreement and request refund of monies legitimately belonging to the customer;
 - b. wait for delivery of available goods; or
 - c. request the Bank to effect replacement with other, similar goods, or non-similar goods insofar as their market value is equal to the goods in the original order;
- (3) If the Bank delivers goods of higher quality to the customer, the Bank may not demand a higher price, unless so agreed between the Bank and the customer;
- (4) If the Bank delivers inferior quality goods to the customer and the customer willingly accepts these goods, the customer may not demand a discount.

Article 13

- (1) The applicable requirements for financing of funds in the form of *Istishna'*-based financing shall be at least as follows:

a. the ...

- a. the Bank shall sell goods to the customer at the agreed specifications, quality, quantity, schedule, place, and price;
 - b. the payment by the customer to the Bank shall not constitute a release for the customer from debts owed to the Bank;
 - c. the amount and form of the payment instrument must be known in keeping with the agreement;
 - d. payment by the customer as buyer to the Bank shall be executed in stages or on agreed terms;
- (2) If all or part of the goods are not available at the agreed time of delivery or in the agreed quality or amount, the customer may choose to:
- a. cancel (*fasakh*) the Agreement and request refund from the Bank;
 - b. wait for delivery of available goods; or
 - c. request the Bank to effect replacement with other, similar goods, or non-similar goods insofar as their market value is equal to the goods in the original order;
- (3) If the Bank delivers goods of higher quality to the customer, the Bank may not demand a higher price, unless so agreed by the Bank and the customer;
- (4) If the Bank delivers inferior quality goods to the customer and the customer willingly accepts these goods, the customer may not demand a discount.

Article 14

- (1) The applicable requirements for financing of funds in the form of financing based on parallel *Istishna'* shall be at least as follows:
- a. the Bank as seller in a *Istishna'* Agreement may prepare a parallel *Istishna'* Agreement with another party, in which the Bank acts as buyer;

b. the ...

- b. the rights and obligations in both *Istishna'* Agreements must be separate;
 - c. the fulfilment of obligations in one *Istishna'* Agreement may not be dependent on the parallel *Istishna'* Agreement or vice versa;
 - d. if the Bank acts as buyer in the parallel *Istishna'* Agreement, the Bank must fulfill obligations to the other party if the customer in the *Istishna'* Agreement defaults on the *Istishna'* Agreement.
 - e. if payments are made in installments, these payments must be made on a pro rata basis.
- (2) The *Istishna'* provisions shall also apply to Parallel *Istishna'* as follows:
- a. the Bank shall purchase the goods from the customer at the agreed specifications, quality, quantity, schedule, place, and price;
 - b. the payment by the Bank to the customer shall not constitute a release for the customer for debts owed to the Bank;
 - c. the amount and form of the payment instrument must be known in keeping with the agreement;
 - d. payment by the Bank as buyer to the customer shall be executed in stages or on agreed terms;
 - e. if the customer delivers goods of higher quality to the Bank, the customer may not demand a higher price;
 - f. if the customer delivers inferior quality goods to the Bank and the Bank willingly accepts these goods, the Bank may not demand a discount.

Sub-section 3

Financing of Funds based on *Ijarah*, *Ijarah muntahiya bitamlik*,
and *Qardh* Agreements

Article 15

The applicable requirements for financing of funds in the form of *Ijarah*-based financing for leasing transactions shall be at least as follows:

- a. the Bank may finance the procurement of leased items as goods owned by the Bank or goods acquired by leasing from another party for the account of the customer, according to agreed terms;
- b. the leased goods and benefits thereof must be such as can be appraised and identified in specific terms and clearly described, including the leasing payments and term of the lease;
- c. the Bank shall provide the leased goods, guarantee the quality and quantity of the leased goods, and prompt delivery of the leased goods in accordance with agreed terms;
- d. the Bank shall bear the costs of material or structural maintenance of the leased goods/assets in accordance with agreed terms;
- e. the Bank may delegate to the customer the task of seeking the goods to be leased by the customer;
- f. the customer shall pay the lease in cash, maintain the leased goods in good order, and bear maintenance costs for the leased goods in accordance with agreed terms;
- g. the customer shall not bear responsibility for damage to the leased goods not resulting from breach of agreement or negligence on the part of the customer.

Article 16

- (1) The applicable requirements for financing of funds in the form of Financing based on *Ijarah muntahiya bittamlik* (IMBT) shall be at least as follows:
 - a. the IMBT must be agreed upon signing of the *Ijarah* Agreement and the agreed terms must be set forth in the *Ijarah* Agreement;
 - b. the IMBT may only be implemented after the *Ijarah* Agreement is fulfilled;
 - c. the Bank shall transfer ownership of the leased goods to the customer on a grant basis at the end of the leasing agreement;
 - d. transfer of ownership of the leased goods to the lessee shall be set forth in a separate Agreement after expiration of the *Ijarah*;
- (2) The *Ijarah* provisions shall also apply to IMBT Agreements as follows:
 - a. the Bank may finance procurement of leased items as goods owned by the Bank or goods acquired by leasing from another party for the account of the customer, according to agreed terms;
 - b. the leased goods and benefits thereof must be such as can be appraised and identified in specific terms and clearly described, including the leasing payments and term of the lease;
 - c. the Bank shall provide the leased goods, guarantee the quality and quantity of the leased goods, and prompt delivery of the leased goods, in accordance with agreed terms;
 - d. the Bank shall bear the costs of material or structural maintenance of the leased goods/assets in accordance with agreed terms;
 - e. the Bank may delegate to the customer the task of seeking the goods to be leased by the customer;

f. the ...

- f. the customer shall pay the lease in cash, maintain the leased goods in good order, and bear maintenance costs for the leased goods in accordance with agreed terms;
- g. the customer shall not bear responsibility for damage to the leased goods not resulting from breach of agreement or negligence on the part of the customer.

Article 17

The applicable requirements for financing of funds into *Ijarah*-based financing for multiservice transactions shall be at least as follows:

- a. the Bank may use the *Ijarah* Agreement for multiservice transactions in financial services, including but not limited to services in education, health, labor, and tourism;
- b. in extending financing to customers using the *Ijarah* Agreement for multiservice transactions, the Bank may earn fees (*ujrah*) for services rendered;
- c. the amount of the *ujrah* or fee shall be agreed in advance and stated in nominal amount, not as a percentage.

Article 18

The applicable requirements for financing of funds for loans based on *Qardh* shall be at least as follows:

- a. the Bank may extend *Qardh* loans for the account of customers based on agreed terms;
- b. the customer shall repay the principal of the *Qardh* borrowing at the agreed term;

c. the ...

- c. the Bank may charge the customer administrative costs pertaining to the extension of the *Qardh* loan;
- d. the customer may provide an additional sum/donation to the Bank, as long as this is not contracted in the Agreement;
- e. in the event that the customer is unable to repay all or part of his obligations at the agreed time because of financial incapacity of the customer, the Bank may extend the term of repayment or write off all or part of the customer loan as loss to the Bank;
- f. if the customer is able to afford repayments and does not repay all or part of his obligations at the agreed time, the Bank may impose a financial penalty for late payment or sell the collateral of the customer to cover the borrowing obligations of the customer;
- g. funds for *Qardh* loans for charitable undertakings may be taken from capital or reserves or from *infak* funds;
- h. funds for *Qardh* funds for short-term financing of commercial business may be taken from Deposit Funds comprising investments, insofar as is not detrimental to the interests of customer holders of funds.

Part Three

Compensatory (*Ta'widh*) Provisions

Article 19

Compensatory (*Ta'widh*) Provisions in Financing:

- a. the Bank may claim compensation (*ta`widh*) only in respect of real, clearly measurable loss against a customer who deliberately or negligently breaches the provisions of an Agreement, thereby incurring loss for the Bank;

b. the ...

- b. the amount of compensation that may be recognized as Bank revenue shall be commensurate to real loss pertaining to Bank efforts to collect from the customer, and shall not include potential loss by reason of opportunity loss/*al-furshah al-dha-i'ah*;
- c. compensation may only be charged in *Ijarah* Agreements and Agreements giving rise to debt and receivables (*dain*), such as *Salam*, *Istishna'*, and *Murabahah*, in which payment is not made in cash;
- d. compensation in *Mudharabah* and *Musyarakah* Agreements may only be claimed by the Bank as *shahibul maal* if the clearly profit of the Bank is not paid by the customer acting as *mudharib*;
- e. the clause on compensation must be stipulated clearly in the Agreement and understood by the customer; and
- f. The amount of compensation in respect of real loss shall be determined on the basis of terms agreed by the Bank and the customer.

CHAPTER III

RESOLUTION OF DISPUTES BETWEEN BANK AND CUSTOMERS

Article 20

- (1) In the event that one party defaults on contracted obligations in an Agreement or in the event of a dispute between a Bank and a Customer, efforts shall be pursued for amicable resolution by mutual consultation;
- (2) If mutual consultation as referred to in paragraph (1) fail to produce an agreement, subsequent settlement may be pursued through alternative dispute resolution or a Sharia arbitration body.

CHAPTER IV SANCTIONS

Article 21

- (1) Any Bank failing to implement the provisions in Article 2 through Article 19 of this Bank Indonesia Regulation shall be liable to administrative sanctions as referred to in Article 52 of Act Number 7 of 1992 concerning Banking as amended by Act Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998 comprising:
- a. written warning;
 - b. downgrading of rating; and/or
 - c. replacement of management.
- (2) Any Sharia Division not conducting supervision pertaining to implementation of the provisions of Article 2 through Article 19 of this Bank Indonesia Regulation shall be liable to administrative sanctions in the form of:
- a. written warning; and/or
 - b. revocation of operating license as Sharia Division.

CHAPTER V TRANSITIONAL PROVISIONS

Article 22

Any Bank Agreement that has expired and is to be extended must be brought into conformity with this Bank Indonesia Regulation.

-- 24 --

CHAPTER VI
CONCLUDING PROVISIONS

Article 23

This Regulation shall come into force on the date of its enactment.

Enacted in Jakarta

Dated: November 14, 2005

THE GOVERNOR OF BANK INDONESIA,

BURHANUDDIN ABDULLAH

STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 124 OF 2005

DPbS

ELUCIDATION
TO
BANK INDONESIA REGULATION
NUMBER: 7/46/PBI/2005
CONCERNING
FUNDS MOBILIZATION AND FINANCING AGREEMENTS FOR BANKS
CONDUCTING BUSINESS BASED ON SHARIA PRINCIPLES

GENERAL REVIEW

The rapid pace of development in the sharia banking industry has also provided opportunity for various interpretations in the formulation of Agreements for sharia banking products and services that could engender a less conducive business climate for sharia banks and uncertainty for related parties and other stakeholders. For this reason it is necessary to regulate funds mobilization and financing Agreements for sharia banks in order to maintain public confidence in the sharia banking system.

The regulation of funds mobilization and financing Agreements for sharia banks will benefit all stakeholders, which in turn will foster sound management of sharia banks. In addition, clarity of Agreements will help improve efficiency in bank operations and provide legal certainty for all parties, including supervisors and auditors of sharia banks.

These provisions concerning the minimum requirements for Agreements have been formulated under the guidance of *fatwas* issued by the National Sharia Council and provide more detailed explanations of the technical aspects of banking in order to provide adequate legal basis for all stakeholders.

These ...

These minimum requirements for Agreements have followed an evolving process that takes account of changes in regulatory conditions and the applicable legal system.

The general principles stipulated in these minimum requirements for Agreements include, but are not limited to, the principle of product and service transparency in an effort to foster complete integrity and trust in sharia banks, the principle of universal applicability, enabling all levels of society to make use of sharia banks, and the principle of priority for amicable resolution of disputes between banks and customers, in so doing to provide a sense of fairness and cost efficiency in resolution of disputes through alternative dispute resolution or sharia arbitration.

ARTICLE BY ARTICLE

Article 1

Number 1 through number 11

Self-explanatory.

Article 2

Paragraph (1)

Self-explanatory.

Paragraph (2)

The intended sharia transactions are defined as *Wadi'ah*, *Mudharabah*, *Musyarakah*, *Murabahah*, *Salam*, *Istishna'*, *Ijarah*, and *Qardh*.

Paragraph (3)

The following definitions apply:

"Gharar" ...

"*Gharar*" is a transaction containing elements of fraud on the part of one party, thus disadvantaging the other party.

"*Maysir*" is a transaction containing elements of gambling, chance, or high speculation.

"*Riba*" is a transaction with usury, whether in a sale and purchase transaction or in a lending and borrowing transaction that is fraudulent or contrary to the teachings of Islam.

"*Zalim*" is any action or deed causing loss and suffering to another party.

"*Risywah*" is a bribe transaction in the form of money, facilities, or other form that violates law in an effort to obtain facilities or easier treatment in a transaction.

"Prohibited goods" are goods or facilities prohibited for use or enjoyment under Islamic law.

Article 3

Self-explanatory.

Article 4

Letter a through letter f

Self-explanatory.

Letter g

"Operational costs" are defined as expenses pertaining directly to facilities for customer account management, for example, costs of ATM cards, printing of checkbooks/*bilyet giro* books, printing of transaction and account balance statements, and opening and closing of accounts.

Letter h ...

Letter h

Self-explanatory.

Article 5

Self-explanatory.

Article 6

Letter a

“*Mudharabah*” in the regulatory sense of this Article is defined as
Mudharabah mutlaqah.

Letter b through letter e

Self-explanatory.

Letter f

Market price shall be used for goods owned by the Bank or not
procured in new condition.

The customer shall repay funds to the Bank in the nominal amount
determined on the basis of cost or market value at the time of the
Agreement.

Letter g through letter k

Self-explanatory.

Letter l

The Bank may conduct a review and request evidence from the
customer’s business performance report. Both parties shall agree to
the business performance report on the basis of substantiated evidence.

Letter m through letter o

Self-explanatory.

Article 7

Self-explanatory.

Article 8

Letter a through letter l

Self-explanatory.

Letter m

The Bank may conduct a review and request evidence from the customer's business performance report. Both parties shall agree to the business performance report on the basis of substantiated evidence.

Letter n and Letter o

Self-explanatory.

Article 9

Paragraph (1)

Letter a

“Goods” are defined as goods of clearly known quantity, quality, and specifications.

Letter b and letter c

Self-explanatory.

Letter d

The *wakalah* must be set out in an Agreement separate from the *Murabahah* Agreement.

“Goods in principle have become the property of the Bank” under *wakalah* in the *Murabahah* Agreement is defined as

existence ...

existence of transfer of funds to the supplier of goods or purchase supported by a receipt.

Letter e through letter g

Self-explanatory.

Letter h

Pro rata installments are installments established by the Bank pro rata for cost price and margin, and with an installment period.

For example:

- Cost of a machine is Rp 10,000,000.- (ten million rupiahs)
- The margin is Rp 2,000,000.- (two million rupiahs)
- The installment period is 12 (twelve) months
- Customer installments are $\text{Rp } 12,000,000.- / 12 = \text{Rp } 1,000,000.-$ (one million rupiahs)

Paragraph (2)

Self-explanatory.

Article 10

Paragraph (1)

“Customer suffering loss of repayment capacity” is defined as a customer whose business is hit by a natural disaster or economic crisis officially proclaimed by the government as a national crisis. The reduction in payment obligations shall be determined on the basis of the Bank policy.

Paragraph (2)

Self-explanatory.

Article 11

Paragraph (1)

Letter a

“Goods” are defined as agricultural crops and/or mining products.

Letter b

“Payment in full upon entering into the Agreement” is defined as payment immediately after entering into the Agreement or no later than 7 (seven) days after entering into the Agreement.

Letter c through letter e

Self-explanatory.

Letter f

Third party guarantee may include but is not limited to guarantee based on sharia principles.

Letter g

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Article 12

Paragraph (1)

Financing based on parallel *Salam* shall come into being when the Bank purchases goods for resale to another party.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Article 13

Paragraph (1)

Letter a

“Goods” are defined as an infrastructure project and/or manufactured products.

Letter b through letter d

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Article 14

Paragraph (1)

Istishna' parallel financing shall come into being when the Bank orders goods for resale to another party.

Paragraph (2)

Letter a

Customer includes a customer that is a manufacturer, supplier, or service provider.

Letter b through letter f

Self-explanatory.

Article 15

Letter a

“Goods” are defined as movable or immobile goods from which benefits can be obtained through leasing.

Letter b and letter c

Self-explanatory.

Letter d

The description of material and structural maintenance shall be in accordance with the agreed terms set forth in the Agreement.

Letter e

The Agreement delegating powers to the customer shall be made separately from the *Ijarah* Agreement.

Letter f and letter g

Self-explanatory.

Article 16

Paragraph (1)

“IMBT” are defined as *Ijarah* with a promise (*wa’ad*) binding the lessor to transfer ownership to the lessee.

Paragraph (2)

Self-explanatory.

Article 17

Self-explanatory.

Article 18

Letter a through letter d

Self-explanatory.

Letter e

“Financial incapacity of the customer” is defined as the inability of the customer in respect of matters outside the control of the customer by reason of natural disaster or national economic crisis proclaimed by the government as a crisis.

Letter f and letter g

Self-explanatory.

Letter h

For the purpose of prudence in extending *Qardh* loans for short-term commercial financing, the Bank may request the customer to provide collateral.

Article 19

Letter a

Self-explanatory.

Letter b

Real losses are the real costs expended by the Bank in recovering payment rightfully owed to the Bank by the customer.

Letter c through letter f

Self-explanatory.

Article 20

Paragraph (1)

Self-explanatory.

Paragraph (2)

The sharia arbitration body to be used shall be the sharia arbitration body domiciled nearest to the Bank office concerned or appointed according to the terms agreed by the Bank and the customer.

Article 21

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 22

Self-explanatory.

Article 23

Self-explanatory.